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RHMFIUU/DEPT OF JUSTICE WASHINGTON DC  
RHEFHLC/DEPT OF HOMELAND SECURITY WASHINGTON DC  
RUEHC/DEPT OF LABOR WASHDC  
RUEATRS/DEPT OF TREASURY WASHDC

UNCLAS GUATEMALA 000164

SIPDIS

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GT

SUBJECT: GUATEMALA ADOPTS NEW ANTI-TIP LAW

REF: 08 GUATEMALA 1450

¶1. (U) Summary: On February 18, Congress unanimously approved a bill against sexual violence, exploitation, and trafficking in persons. The bill, introduced in August 2008 by Congresswoman Zury Rios Montt (FRG) and Sonia Segura Varsoly (independent), provides a comprehensive legal framework for the prevention of trafficking in persons and related crimes, protection of victims, and prosecution of traffickers. End Summary.

¶2. (U) The new law creates a secretariat attached to the Vice President's Office to coordinate GOG efforts to combat sex crimes and trafficking in persons. The secretariat will reportedly have a budget of Q5 million (USD 641,026) in 2009, including funding for compensation to victims of these crimes. The law also establishes a process for repatriation of trafficked victims, and focuses on protection of minors. It penalizes not only traffickers but also those who use the services of trafficked persons and sexually exploited victims, including victims of child pornography. It increases the sentence for trafficking in persons from 6-12 years to 8-18 years in prison, imposes a fine of Q300,000 - Q500,000 (USD 38,462 - 64,103), and modifies several TIP-related provisions in the Penal Code. Wiretapping and undercover operations, permissible under the Law Against Organized Crime, may be used to investigate and prosecute traffickers.

¶3. (U) The law defines new crimes, including facilitation of illegal adoption, facilitation of prostitution, and production of child pornography, and expands the definition of rape by removing the requirement of use of force in cases where the victim is less than 14 years of age. It also increases the penalty for rape from 6-12 years to 8-12 years' imprisonment, with the heavier penalty for particularly vulnerable victims, such as elderly persons and pregnant women, and other aggravated circumstances, including infection by a sexually transmitted disease during the rape. The penalty for procurement is five to 10 years' imprisonment and a fine of up to Q100,000 (USD 12,821).

¶4. (U) UNICEF estimates that trafficking in persons is the third most lucrative activity for organized crime, after narcotrafficking and arms trafficking. Casa Alianza/Guatemala has estimated that at least 15,000 minors are sexually exploited in Guatemala. There are no reliable estimates on the magnitude of trafficking in persons in Guatemala. Local NGOs do not have any estimates due to the clandestine nature of trafficking and under-reporting by victims.

¶5. (U) Civil society leaders and drafters of the legislation hailed the passage of the law -- the culmination of seven years of effort and numerous drafts -- as an important victory that will provide greater protection to victims, particularly women and children. Maria Eugenia Villareal, President of NGO End Child Prostitution, Child Pornography and Trafficking in Children for Sexual Purposes (ECPAT/Guatemala), characterized the new legislation as "one more step in the fight against trafficking in persons and in the protection of children," and expressed pride that Guatemala finally has a legal framework in accordance with international standards. Congresswoman Zury Rios publicly stated that the courts must now demonstrate political will to apply the law and put an end to impunity.

¶6. (SBU) Comment: The passage of this bill, just six months after it was introduced in Congress, is significant. It reflects the GOG's recognition of the seriousness of sexual violence, exploitation, and trafficking in persons, and demonstrates its commitment to improve protection for the most vulnerable sectors of the population -- women and children. The previous anti-TIP law (Article 194 of the Penal Code) had been criticized for its lack of clarity and difficulty of application. This new law addresses a key recommendation in G/TIP's Short-Term Action Plan for Guatemala. It remains to be seen, however, how soon this new legislation will translate to more vigorous enforcement efforts on the ground.  
McFarland